

HUDSON'S BAY COMPANY.

1850

PAPERS presented by Command of Her Majesty to The House of Commons, in pursuance of an Address praying that Her Majesty would be graciously pleased to direct that such Means as to Her Majesty shall seem most fitting and effectual, be taken to ascertain the Legality of the Powers in respect to TERRITORY, TRADE, TAXATION and GOVERNMENT, which are, or recently have been, claimed or exercised by the HUDSON'S BAY COMPANY, on the Continent of *North America*, under the Charter of his Majesty King CHARLES the Second, issued in the Year 1670, or in Virtue of any other Right or Title, except those conveyed by or under the Act 43 Geo. 3, c. 138 (extending the Criminal Jurisdiction of Canadian Courts), and 1 & 2 Geo. 4, c. 66, intituled, "An Act for regulating the Fur Trade, and establishing a Criminal and Civil Jurisdiction within certain Parts of *North America*."

Colonial Office, Downing-street, }
11 July 1850.

B. HAWES.

Ordered, by The House of Commons, to be Printed,
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PAPERS presented by Command of Her Majesty to The House of Commons, in pursuance of an Address praying that Her Majesty would be graciously pleased to direct that such Means as to Her Majesty shall seem most fitting and effectual, be taken to ascertain the Legality of the Powers in respect to TERRITORY, TRADE, TAXATION and GOVERNMENT, which are, or recently have been, claimed or exercised by the HUDSON'S BAY COMPANY, on the Continent of *North America*, under the Charter of his Majesty King CHARLES the Second, issued in the Year 1670, or in Virtue of any other Right or Title, except those conveyed by or under the Act 43 Geo. 3, c. 138 (extending the Criminal Jurisdiction of Canadian Courts), and 1 & 2 Geo. 4, c. 66, intituled, "An Act for regulating the Fur Trade, and establishing a Criminal and Civil Jurisdiction within certain Parts of *North America*."

No. 1.

H. Merivale, Esq.
to Sir J. H. Pelly,
Bart.,
23 August, 1849.

— No. 1. —

COPY of a LETTER from *H. Merivale*, Esq., to Sir *J. H. Pelly*, Bart.

Sir,

Downing-street, 23 August 1849.

I AM directed by Earl Grey to transmit to you the enclosed copy of a Resolution of The House of Commons; and as it was with your concurrence, on behalf of the Company, that the adoption of this Resolution was assented to by Her Majesty's Government, I have to request you to move the Directors of the Hudson's Bay Company to render their assistance in complying with the Address of The House of Commons, by furnishing his Lordship with a statement of the rights to which the Company consider themselves entitled, and the extent to which those rights are at present, or have recently been, exercised in relation to the several heads of inquiry specified in the Resolution.

5 July 1849.

I have, &c.
(signed) *H. Merivale*.

— No. 2. —

COPY of a LETTER from Sir *J. H. Pelly*, Bart. to Earl *Grey*.

Hudson's Bay House, London,

13 September 1849.

My Lord,

I HAVE to acknowledge the receipt of Mr. Merivale's letter of the 23d of August, written by your Lordship's direction, enclosing a copy of a Resolution of The House of Commons, dated the 5th July last, that an Address be presented to Her Majesty, praying that Her Majesty will direct means to be taken to ascertain the legality of the powers, in certain respects therein specified, which are claimed or exercised by the Hudson's Bay Company on the Continent of North America.

No. 2.

Sir J. H. Pelly,
Bart., to Earl Grey,
13 Sept. 1849.

That letter has been submitted to the Directors of the Hudson's Bay Company; and, in compliance with your request, that they would render their assistance in complying with the Address of The House of Commons, by furnishing your Lordship with a statement of the rights to which the Company consider themselves entitled, and the extent to which those rights are at present, or have recently been exercised, in relation to the several heads of inquiry specified in the Resolution; I have now the honour to forward to you a statement of the

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MAP at the end.

rights as to territory, trade, taxation and government claimed and exercised by the Hudson's Bay Company on the Continent of North America, accompanied with a Map of North America, on which the territories claimed by the Hudson's Bay Company, in virtue of the Charter granted to them by King Charles the Second, are coloured green, the other British territories pink, and those of Russia yellow.

I have, &c.

(signed) J. H. Pelly.

Enclosure in No. 2.

STATEMENT of the RIGHTS, as to TERRITORY, TRADE, TAXATION and GOVERNMENT claimed and exercised by the Hudson's Bay Company on the Continent of North America.

Encl. in No. 2.

By the charter of his Majesty King Charles the Second, dated the 2d May 1670, by which the Hudson's Bay Company was constituted, his Majesty granted to the Company as follows:—

" We have given, granted and confirmed, and by these presents, for us, our heirs and successors, do give, grant and confirm, unto the said Governor and Company, and their successors, the sole trade and commerce of all those seas, straits, bays, rivers, lakes, creeks and sounds in whatsoever latitude they shall be, that lie within the entrance of the straits commonly called Hudson's Straits, together with all the lands and territories upon the countries, coasts and confines of the seas, bays, lakes, rivers, creeks and sounds aforesaid, that are not already actually possessed by or granted to any of our subjects, or possessed by the subjects of any other Christian Prince or State, with the fishing of all sorts of fish, whales and sturgeons, and all other royal fishes, in the seas, bays, inlets and rivers within the premises, and the fish therein taken, together with the royalty of the sea upon the coasts within the limits aforesaid; and all mines royal, as well discovered as not discovered, of gold, silver, gems and precious stones, to be found or discovered within the territories, limits and places aforesaid; and that the said land be from henceforth reckoned and reputed as one of our plantations or colonies in America, called "Rupert's Land": And further, we do by these presents, for us, our heirs and successors, make, create and constitute the said Governor and Company for the time being, and their successors, the true and absolute lords and proprietors of the same territory, limits and places aforesaid, and of all other the premises, saving always the faith, allegiance and sovereign dominion due to us, our heirs and successors for the same; to have, hold, possess and enjoy the said territory, limits and places, and all and singular other the premises hereby granted as aforesaid, with their and every of their rights, members, jurisdictions, prerogatives, royalties and appurtenances whatsoever to them the said Governor and Company and their successors for ever, to be holden of us, our heirs and successors as of our manor of East Greenwich, in our county of Kent, in free and common socage, and not in capite, or by knight's service; yielding and paying yearly to us, our heirs and successors, for the same, two elks and two black beavers, whensoever and as often as we, our heirs and successors, shall happen to enter into the said countries, territories and regions hereby granted."

Under this grant the Company have always claimed and exercised dominion as absolute proprietors of the soil in the territories understood to be embraced by the terms of the grant, and which are more particularly defined in the accompanying map; and they have also claimed and enjoyed the exclusive right of trading in those territories.

It may be right here to mention, that, although the original title to the territory and trade in question was derived under the charter above referred to, the rights of the Company have, in various instances, received the recognition of the Legislature.

The Act of 14 Geo. 3, c. 83, which is intituled, "An Act for making more effectual Provision for the Government of the Province of Quebec, in North America," in describing the boundaries of Canada, expressly refers to their lying "northward to the southern boundary of the territories granted to the Merchants Adventurers of England trading into Hudson's Bay;" thereby distinctly recognizing the existence of such a grant, and referring to the known boundary on the south of the territories so granted.

Again, an Act was passed in the 43d year of the reign of Geo. 3, c. 138, intituled, "An Act for extending the Jurisdiction of the Courts of Justice in the Provinces of Lower and Upper Canada to the Trial and Punishment of Persons guilty of Crimes and Offences within certain Parts of North America adjoining to the said Provinces;" and this Act, having stated in the preamble that crimes committed in the Indian territories were not then cognizable by any jurisdiction whatsoever, declares that such crimes should be considered as if committed within the jurisdiction of the Canadian courts.

A doubt having arisen whether this provision extended to the territories possessed by the Hudson's Bay Company, because, although they formed part of the Indian territories, crimes therein committed could not be said not to be cognizable by any jurisdiction whatsoever, inasmuch as the Hudson's Bay Company had a distinct jurisdiction conferred upon it by its charter, an Act was passed in the 1st & 2d Geo. 4, c. 66, intituled, "An Act for regulating the Fur Trade, and establishing a Commercial and Civil Jurisdiction within certain

Parts of North America," by which, after reciting that doubts had been entertained whether the provisions of the Act of Geo. 3 extended to the territories granted by charter to the Governor and Company of Adventurers of England trading into Hudson's Bay, and that it was expedient that such doubts should be removed, and the said Act should be further extended, it was declared and enacted, that the provisions of the Act of 43 Geo. 3 should be deemed and construed "to extend to and over, and to be in full force in and through all the territories theretofore granted to the Hudson's Bay Company;" thus again distinctly recognizing the existence of the grant of the soil, as well as the jurisdiction; for the Act contains an express reservation that nothing therein contained should affect the rights, privileges, authority or jurisdiction of the Hudson's Bay Company; and, in consequence, from that period, the Company and the Canadian courts have exercised a concurrent jurisdiction as to offences committed within the territories of the Company. By this Act also power was given to the Crown to make, grant or give licenses for the exclusive privilege of trading with the Indians in all such parts of North America as should be specified in any such grants or licenses not being part of the lands and territories granted to the Governor and Company of Adventurers of England trading to Hudson's Bay, and not being part of any of the Crown provinces in North America, or of any lands or territories belonging to the United States of America.

By virtue of licenses granted under the powers of this Act, the Company are entitled to certain exclusive rights of trading beyond the limits of their own territories; but this Act is referred to here as distinctly recognizing the rights of the Company to exclusive trade within their own territories.

With regard to Taxation and Government, the Company, under their charter, are invested with power "to make, ordain and constitute such and so many reasonable laws, constitutions, orders and ordinances as to them, or the greater part of them, being then and there present, shall seem necessary and convenient for the good government of the said Company, and of all Governors of colonies, forts and plantations, factors, masters, mariners and other officers employed or to be employed in any of the territories and lands aforesaid, and in any of their voyages, and for the better advancement and continuance of the said trade or traffic and plantations, and the same laws, constitutions, orders and ordinances so made, to put in use and execute accordingly, and at their pleasure to revoke and alter the same, or any of them, as the occasion shall require: and it is provided, that the said Governor and Company, so often as they shall make, ordain or establish any such laws, constitutions, orders and ordinances, in such form as aforesaid, shall and may lawfully impose, ordain, limit and provide such pains, penalties and punishments upon all offenders contrary to such laws, constitutions, orders and ordinances, or any of them, as to the said Governor and Company for the time being, or the greater part of them then and there being present (the said Governor, or his deputy, being always one), shall seem necessary, requisite or convenient for the observation of the same laws, constitutions, orders and ordinances; and the same fines and amerciaments shall and may, by their officers and servants, from time to time to be appointed for that purpose, levy, take and have to the use of the said Governor and Company, and their successors, without the impediment of us, our heirs or successors, or of any of the officers or ministers of us, our heirs or successors, and without any account therefore to us, our heirs or successors, to be made so always as the said laws, constitutions, orders and ordinances, fines and amerciaments, be reasonable, and not contrary or repugnant, but as near as may be agreeable to the laws, statutes or customs of this our realm." And it is further provided, "that all lands, islands, territories, plantations, forts, fortifications, factories or colonies, where the said Company's factories and trade are or shall be, within any the ports or places aforesaid, limited, shall be immediately and from henceforth under the power and command of the said Governor and Company, their successors and assigns, and the said Governor and Company are empowered to appoint and establish Governors and all other officers to govern them." And it is provided, "that the Governor and his Council of the several and respective places where the said Company shall have plantations, forts, factories, colonies or places of trade, within any of the countries, lands or territories hereby granted, may have power to judge all persons belonging to the said Governor and Company, or that shall live under them, in all causes, whether civil or criminal, according to the laws of this Kingdom, and to execute justice accordingly; and in case any crime or misdemeanor shall be committed in any of the said Company's plantations, forts, factories or places of trade, within the limits aforesaid, where judicature cannot be executed for want of Governor and Council there, then in such case it shall and may be lawful for the Chief Factor of that place and his council to transmit the party, together with the offence, to such other plantation, factory or fort where there shall be a Governor and Council, where justice may be executed, or into this Kingdom of England; as shall be thought most convenient, there to receive such punishment as the nature of his offence shall deserve."

In pursuance of the authority thus given, the Company have invariably exercised all the powers of Government necessary for the administration of justice in their territory, and for that purpose have appointed proper officers, who have acted judicially in all matters arising therein.

As already observed, the Canadian courts have now a concurrent jurisdiction with the Company.

It may be right here to refer to several Acts of the Legislature which have recognized the general rights and privileges claimed and exercised by the Company.

An Act passed in the sixth year of the reign of Queen Anne, c. 37, intituled, "An Act

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for the Encouragement of the Trade to America," and this Act contains an express proviso, that "nothing therein contained shall extend or be construed to take away or prejudice any of the estates, rights or privileges of or belonging to the Governor and Company of Adventurers trading into Hudson's Bay."

In like manner, in 1745, when an Act was passed (18 Geo. 2, c. 17), for granting a reward for the discovery of a north-west passage through Hudson's Straits, it was expressly provided, that "nothing therein contained should extend or be construed to take away or prejudice any of the estates, rights or privileges of or belonging to the Hudson's Bay Company."

No exact system of taxation has been claimed or exercised by the Company; and until a colony of resident settlers was established, other than the Company's own servants, the Company defrayed the whole expenses of the government of their territories, without the aid of any contribution whatever; but since a colony was formed, it has been made a stipulation with the community, upon their becoming settlers, and receiving parcels of land, that they should contribute towards the expenses of the government of the colony; but the main charge has continued to be borne by the Company.

— No. 3. —

COPY of a LETTER from *A. K. Isbister, Esq.* to *Lord John Russell*.

36, Rotherfield-street, Lower Road, Islington,

30 September 1849.

No. 3.

A. K. Isbister, Esq.,
to Lord J. Russell,
30 Sept. 1849.

My Lord,
It will be in your Lordship's recollection, that during the last Session of Parliament an Address was agreed to by The House of Commons, praying Her Majesty to institute an inquiry into the legality of certain powers claimed and exercised by the Hudson's Bay Company, under a charter granted by King Charles 2d (but without the concurrence of Parliament), to that body in the year 1669. As the representative of the inhabitants of the Hudson's Bay territories, in British North America, who have appealed against the exercise of those powers, I have been requested respectfully to inquire in what mode it is the intention of Her Majesty's Government to carry out the objects and purport of the Address, and whether, in the event of any reference to a judicial tribunal being contemplated, it will be necessary for the parties interested to appear by counsel or otherwise, or to furnish evidence, and if so, of what nature.

I have, &c.

(signed) *A. K. Isbister*.

— No. 4. —

COPY of a LETTER from *B. Hawes, Esq.* to *A. K. Isbister, Esq.*

Downing-street, 22 October 1849.

No. 4.

B. Hawes, Esq., to
A. K. Isbister, Esq.,
22 October 1849.

Sir,
With reference to your letter of the 30th ultimo, requesting to be informed in what manner Her Majesty's Government propose to carry into effect an inquiry into the legality of certain powers claimed and exercised by the Hudson's Bay Company, I am directed by Earl Grey to acquaint you, that the subject is at present under consideration.

I have, &c.

(signed) *B. Hawes*.

— No. 5. —

COPY of a LETTER from *B. Hawes, Esq.* to *Mr. Attorney-General*.

(A similar Letter to the Solicitor-General.)

No. 5.
B. Hawes, Esq., to
Mr. Attorney-
General,
30 October 1849.

Sir,

Downing-street, 30 October 1849.

5 July 1849.

I am directed by Earl Grey to transmit to you herewith the copy of a Resolution of The House of Commons, that an Address be presented to Her Majesty, praying that measures may be taken for ascertaining the legality of the powers which

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which are claimed or exercised by the Hudson's Bay Company on the Continent of North America.

I am also to enclose the copy of a letter from the Chairman of the Hudson's Bay Company, together with a statement and map, prepared under his direction, of the territories claimed by the Company in virtue of the Charter granted to them by King Charles the Second.

I am further to send you the copy of a letter, dated the 30th ultimo, from Mr. A. K. Isbister, inquiring in what mode Her Majesty's Government intend to give effect to the Resolution of The House of Commons, and whether, in the event of any reference to a judicial tribunal, it will be necessary for the parties interested to appear by counsel or otherwise, or to furnish evidence, and if so, of what nature.

Lord Grey requests that, in conjunction with Mr. Solicitor-General, you will take these papers into your early consideration, and inform his Lordship whether you are of opinion that the rights claimed by the Company do properly belong to them. In the event of your entertaining a doubt on any point raised in these papers, I am to request that you will advise his Lordship in what manner the opinion of a competent tribunal may best be obtained on the subject.

I am, &c.

(signed) *B. Hawes.*

13 Sept. 1849.
See No. 2, page 3.

See No. 3, page 6.

—No. 6.—

COPY of a LETTER from Sir *John Jervis* and Sir *John Romilly* to Earl *Grey*.

My Lord,

Temple, January 1850.

WE were honoured with your Lordship's commands contained in Mr. Hawes's letter of the 30th October last, in which he stated that he was directed by your Lordship to transmit to us the copy of a Resolution of The House of Commons, that an Address be presented to Her Majesty, praying that measures may be taken for ascertaining the legality of the powers which are claimed or exercised by the Hudson's Bay Company on the Continent of North America.

Mr. Hawes then stated, that he was to enclose the copy of a letter from the Chairman of the Hudson's Bay Company, together with a statement and map, prepared under his direction, of the territories claimed by the Company in virtue of the Charter granted to them by King Charles the Second.

Mr. Hawes also sent the copy of a letter, dated the 30th September last, from Mr. A. K. Isbister, inquiring in what mode Her Majesty's Government intend to give effect to the Resolution of The House of Commons, and whether, in the event of any reference to a judicial tribunal, it will be necessary for the parties interested to appear by counsel or otherwise, or to furnish evidence, and if so, of what nature.

Mr. Hawes concluded by stating, that your Lordship requested that we would take these papers into our early consideration, and inform you whether we are of opinion that the rights claimed by the Company do properly belong to them. In the event of our entertaining a doubt on any point raised in these papers, Mr. Hawes was to request that we would advise your Lordship in what manner the opinion of a competent tribunal can be obtained on the subject.

In obedience to your Lordship's command, we have taken these papers into our consideration, and have the honour to report, that, having regard to the powers in respect of territory, trade, taxation, and government, claimed by the Hudson's Bay Company in the statements furnished to your Lordship by the Chairman of that Company, we are of opinion, that the rights so claimed by the Company do properly belong to them.

Upon this subject we entertain no doubt; but as it will be more satisfactory to the complainants against the Company, to the promoters of the discussion in the House of Commons, and possibly to the Company themselves, if the questions are publicly argued and solemnly decided, we humbly advise your Lordship to refer these questions to a competent tribunal for consideration and decision, and to inform Mr. Isbister that he may appear as complainant, and the Company that they may be heard as respondents upon the argument. The proper mode of raising the question for discussion will, we presume, be

No. 6.
Sir John Jervis and
Sir John Romilly
to Earl Grey,
January 1850.

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for Mr. Isbister, or some other person, to embody in a Petition to Her Majesty the complaints urged against the Hudson's Bay Company; and such a Petition may be referred by Her Majesty either to the Judicial Committee, under the 4th section of the Statute 3 & 4 Will. 4, c. 41, or to the Committee of Trade, as involving questions within their jurisdiction. The Judicial Committee, from its constitution, is the best fitted for the discussion of a case of this description, and we recommend that to that tribunal the proposed petition should be referred.

We have, &c.

(signed) *John Jervis.*
John Romilly.

— No. 7. —

No. 7.
B. Hawes, Esq., to
Sir J. H. Pelly,
Bart.,
24 January 1850.

See Letter of 29th
January to Mr.
Isbister, No. 9 of
this Series.

COPY of a LETTER from *B. Hawes*, Esq. to *Sir J. H. Pelly*, Bart.

Sir,

Downing-street, 24 January 1850.

I AM directed by Earl Grey to transmit to you the copy of a letter which his Lordship proposes to have addressed to Mr. Isbister, desiring to be informed whether it is his intention to petition Her Majesty to refer the complaints urged against the Hudson's Bay Company to the Judicial Committee, or the Committee of Trade and Plantations, in order to ascertain the legality of the powers in respect to territory, trade, taxation and government, which are, or recently have been, claimed or exercised by the Hudson's Bay Company; and, should the Queen be pleased to refer the Petition to such Committee, whether he will be prepared to prosecute such complaints in the manner suggested; informing him, at the same time, that the Petition must be confined to the subject to which the Resolution of The ~~House~~ of Commons of the 5th July 1849 extends.

I have, &c.

(signed) *B. Hawes.*

— No. 8. —

COPY of a LETTER from *A. Barclay*, Esq., Secretary to the Hudson's Bay Company, to *B. Hawes*, Esq.

No. 8.
A. Barclay, Esq.
to B. Hawes, Esq.,
29 January 1850.

Sir,

Hudson's Bay House, 29 January 1850.

I AM directed to acknowledge the receipt of your letter of the 24th instant, transmitting to Sir J. H. Pelly the copy of a letter which Earl Grey proposes to have addressed to Mr. Isbister, desiring to be informed whether it is his intention to petition Her Majesty to refer the complaints urged against the Hudson's Bay Company to a competent tribunal for consideration and decision.

In reply to which, I am to state, that there is nothing in the letter proposed to be addressed to Mr. Isbister, to which the Directors of the Hudson's Bay Company have the least objection.

I have, &c.

(signed) *A. Barclay, Secy.*

— No. 9. —

COPY of a LETTER from *B. Hawes*, Esq. to *A. K. Isbister*, Esq.

No. 9.
B. Hawes, Esq., to
A. K. Isbister, Esq.,
29 January 1850.

Sir,

Downing-street, 29 January 1850.

I AM directed by Earl Grey to inform you, that, it having been resolved by The House of Commons, on the 5th July 1849, that an Address should be presented to Her Majesty, praying Her to direct that such means should be taken as to Her Majesty should seem most fitting and effectual to ascertain the legality

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legality of the powers in respect to territory, trade, taxation and government, which are, or recently have been, claimed or exercised by the Hudson's Bay Company on the Continent of North America, his Lordship, in consequence, took early measures for obtaining from the Attorney and Solicitor-general their opinion as to the legality of those powers.

2. He obtained from the Company a statement of their alleged rights as to territory, trade, taxation and government, of which I am directed to annex a copy.

3. This statement was submitted to Her Majesty's Attorney and Solicitor-General, who reported to Lord Grey, that they were of opinion that the rights so claimed by the Company do belong to them; but they added, that if it was thought desirable to refer these questions to a competent tribunal for consideration and decision, the proper mode for raising the discussion would be for you, or some other person, to embody, in a Petition to Her Majesty, the complaints urged against the Hudson's Bay Company, and Her Majesty might then refer such Petition to the Judicial Committee, or to the Committee of Trade and Plantations.

4. I am, therefore, directed by Earl Grey to request you to determine whether you wish to prosecute such complaints in the manner thus suggested, namely, by Petition to the Queen; in which case, should Her Majesty refer that Petition as above mentioned, you would have to appear as complainant, and the Company as respondents, before the tribunal to which the reference would take place. But inasmuch as it is his Lordship's wish to give effect to the Resolution of The House of Commons, such Petition must be confined to the subject to which that Resolution extends, namely, to those claims of the Company specified in the Resolution, of which you are anxious to contest the legality. Any allegations of misuse of their legal powers by the Company must be otherwise dealt with, and could not be inquired into by the tribunal to which the question as to the legal rights of the Company will be referred.

5. I am directed to request that you will favour Lord Grey with your decision on this question as early as you conveniently can.

I have, &c.
(signed) B. Hawes.

— No. 10. —

COPY of a LETTER from A. K. Isbister, Esq., to Earl Grey.

36, Rotherfield-street, Islington,

9 March 1850.

My Lord,

I HAVE the honour to acknowledge a communication from Mr. Under-Secretary Hawes, dated 29th January; in which, as a mode of giving effect to an Address to the Crown from The House of Commons, praying for an inquiry into the legality of certain powers exercised by the Hudson's Bay Company, the course is suggested, that I should petition Her Majesty on the subject of such of those powers as the inhabitants of the Red River colony are desirous of contesting; and, upon the reference of such Petition to the Judicial Committee of the Privy Council, or to the Committee of Trade and Plantations, it would be open to me to appear as complainant in any proceedings which might be instituted before the tribunal to which such reference would be made.

I have felt the necessity of giving a proposition of this importance the most mature consideration, and a lengthened deliberation has but confirmed the opinion I from the first entertained, that, in a matter resting so entirely between Her Majesty's Advisers and The House of Commons, I should not be justified in assuming the responsibility of the course your Lordship has suggested, more especially as Her Majesty's Government, in undertaking to raise and investigate the whole case, has thereby relieved me from the necessity of appearing as a party to the prosecution.

In respectfully declining, for these reasons, the proposal on which your Lordship has been pleased to request my decision, I take the opportunity to add, that

See No. 2, page 4.

No. 10.
A. K. Isbister, Esq.,
to Earl Grey,
9 March 1850.

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I shall have great satisfaction in affording any information on the subject of the powers exercised by the Hudson's Bay Company, throughout their territories, in any manner your Lordship may suggest, or in otherwise furthering the objects of the inquiry.

I have, &c.
(signed) *A. K. Isbister.*

— No. 11 —

COPY of a LETTER from *B. Hawes, Esq.*, to *A. K. Isbister, Esq.*

No. 11.

*B. Hawes, Esq., to
A. K. Isbister, Esq.,
21 March 1850.*

Sir,

Downing-street, 21 March 1850.

I AM directed by Earl Grey to acknowledge your letter of the 9th of this month, and to make the following observations on it, in order that you may fully understand the view which his Lordship takes of the present position of the questions touching the validity of the Hudson's Bay Company's charter.

2. You were apprised by my letter of the 29th January, that the Address to the Queen, voted by The House of Commons, was to the effect, that such means should be taken as to Her Majesty might seem most fitting and effectual to ascertain the legality of the powers of the Hudson's Bay Company. The means accordingly taken were, to obtain from the Company a statement of its claims, and to submit it to Her Majesty's Law Advisers, who reported that they were of opinion that those claims were well founded. They added, that, with a view to the fuller satisfaction of The House of Commons and the parties interested, it was advisable to refer these questions to a competent tribunal, and that the proper method of raising the discussion would be, for yourself, or some other person, to address a Petition to Her Majesty, which Petition might then be referred either to the Judicial Committee, or the Committee of Privy Council for Trade and Plantations.

3. Such a Petition appears, therefore, to be essential to the further prosecution of the inquiry. If no petitioner appears, Lord Grey can only rest satisfied with the opinion he has received from the Law Officers of the Crown, and must consider that, in procuring it, he has adopted the most effectual means open to him for answering the requirement of the Address. He is therefore anxious that you should re-consider your letter of the 9th, inasmuch as, should none of the parties who have questioned the validity of the Company's charter, or the extent of its rights, be willing to take the necessary steps for bringing the subject under judicial investigation, he must, in the absence of any parties prepared to contest the rights claimed by the Company, assume the opinion of the Law Officers in their favour to be well founded.

I have, &c.

(signed) *B. Hawes.*

— No. 12. —

EXTRACT of a LETTER from *H. Merivale, Esq.*, to *J. M'Loughlin, Esq.*, dated Downing-street, 5 April 1850.

No. 12.
*B. Hawes, Esq., to
J. M'Loughlin,
Esq.,
5 April 1850.*

“ I AM directed by his Lordship to acquaint you with the position of the question as it at present stands between Mr. Isbister and the Hudson's Bay Company.

“ On the 5th of July last The House of Commons having resolved that an Address should be presented to Her Majesty, praying that such measures might be taken as to Her Majesty might appear most fitting and effectual for ascertaining the legality of the powers claimed and exercised by the Hudson's Bay Company on the continent of British North America, his Lordship called for a report from the Attorney and Solicitor-General. These officers reported their opinion, on the 7th January last, to be, that the claims of the Company were well founded; but they added, that if it was thought desirable to refer the subject to a competent tribunal for

for adjudication, the proper mode would be for some person to embody in a Petition to Her Majesty the objections made to the claims of the Company, and that Her Majesty might then refer such Petition to the Judicial Committee, or to the Committee of Trade and Plantations. Mr. Isbister was accordingly requested to state whether he would undertake the office of preferring and sustaining such a Petition; he has declined the duty, for reasons which he fully explained. Lord Grey has, however, repeated the proposal to that gentleman, informing him at the same time, that if none of the parties who have questioned the validity of the Company's charter, or the extent of its rights, should be willing to take the necessary steps for bringing the subject under judicial investigation, his Lordship must, in the absence of any such opposition to the rights claimed by the Company, assume the opinion of the Law Officers of the Crown to be well founded.

"His Lordship wished these matters to be brought to your notice, in case you may be yourself disposed, either alone or in combination with Mr. Isbister and others, to present such a Petition, with a view to the trial of these questions."

— 13. —

COPY of a LETTER from *J. McLoughlin, Esq.*, to *Earl Grey*.

My Lords,

4, Donegal-street, Belfast, 13 April 1850.

No. 13.

I HAVE the honour to acknowledge a communication from Mr. Merivale, dated 5th April 1850.

*J. McLoughlin,
Esq., to Earl Grey,
13 April 1850.*

Although well known to me by reputation, Mr. Isbister was personally a perfect stranger to me, till quite recently that I had an opportunity of placing at his disposal some documents relative to the condition of the Red River settlement; I was therefore quite ignorant that a correspondence of the nature described by Mr. Merivale had passed between your Lordship and that gentleman, being under the impression, from the Parliamentary Papers referred to in my last letter, and from reports circulated in Hudson's Bay, that your Lordship had declined to receive any further statements from him. This must plead my apology for having myself intruded on your Lordship's attention in my two previous communications.

With reference to the subject of Mr. Merivale's letter, your Lordship must perceive that it places me in a very embarrassing situation. I was aware that The House of Commons had addressed the Crown to institute an inquiry into the legality of the Hudson's Bay Company's charter, and I was certainly under the impression that, in accepting that Address, the Government had undertaken a full and searching investigation into the validity of the Company's claims; I was therefore not prepared for the suggestion that, as a mode of satisfying the Address, it was competent for me to interfere in a question of such importance, and at my own cost and hazard assume the responsibility of prosecuting a great public corporation, who, in such a case, where the very existence of their monopoly of trade is at stake, would naturally resort to every legal subterfuge, entailing an amount of expense which no private individual would be justified in incurring, for the preservation of their privileges; I was the less prepared for this, as numerous precedents are on record, in the case of the charters of the early American colonies, in which the Sovereign, by writs of *quo warranto*, had repealed such of them as contained powers inimical to the rights and liberties of the subject. It is, of course, competent to any party aggrieved by the proceedings of the Hudson's Bay Company to appeal at any time to the Judicial Committee; but I cannot help entertaining the conviction, that those interested in the question will scarcely consider this is the fitting issue of an Address to The House of Commons.

It is with much regret, therefore, that I feel myself under the necessity of respectfully declining the proposal made to me by Mr. Merivale. At the same time, it will give me great pleasure to contribute every information in my power, and, if necessary, assume any position short of the actual responsibility of the prosecution, with the view of promoting the inquiry. Unless Government is

PAPERS RELATING TO THE

prepared to defray the expenses of the procedure, I fear your Lordship will have some difficulty in finding persons in this country willing or able to incur that responsibility.

I have, &c.

(signed) *John M'Loughlin.*

— No. 14. —

COPY of a LETTER from *A. K. Isbister, Esq.* to *Earl Grey.*

No. 14.
A. K. Isbister, Esq.,
to Earl Grey,
16 April 1850.

Page 10.

36, Rotherfield-street, Lower Road, Islington,

16 April 1850.

My Lord,

I HAVE the honour to acknowledge a communication from Mr. Under-Secretary Hawes of the 21st* March last, stating that your Lordship was anxious that I should re-consider my letter of the 9th, inasmuch as should none of the parties, who have questioned the validity of the Hudson's Bay Company's Charter, or the extent of its rights, be willing to take the necessary steps for bringing the subject under judicial investigation, you must, in the absence of any parties prepared to contest the rights claimed by the Company, assume the opinion of the Law Officers in their favour to be well-founded.

From this communication I collect, that I had previously misapprehended your Lordship's intentions, which I understood to be, not merely that I should present a Petition, in order to originate the investigation into the validity of the Hudson's Bay Company's Charter, but that I should also incur the responsibility and expense of supporting the case to be made against that Charter before the Privy Council.

I am now disposed to think that all which your Lordship intended to require of me was, that I should prepare a Petition, embodying the objections which are considered to exist to such Charter, so as to enable the question to be brought forward in a precise and formal manner, and that then, according to the intentions expressed in the Address to the Queen, voted by The House of Commons, the Government would take upon itself the responsibility of adopting the most fitting and effectual means to ascertain the opinion of the Privy Council as to the legality of the powers of the Hudson's Bay Company.

If I am now right in the view which I have taken of your Lordship's intentions, and you will honour me with an assurance to that effect, I shall lose no time in having the necessary Petition prepared and presented to your Lordship, in order that the proper ground may be laid for commencing the inquiry.

I have, &c.

(signed) *A. K. Isbister.*

— No. 15. —

COPY of a LETTER from *B. Hawes, Esq.* to *A. K. Isbister, Esq.*

No. 15.
B. Hawes, Esq., to
A. K. Isbister, Esq.,
30 April 1850.

Sir,

Downing-street, 30 April 1850.

In answer to your letter of the 16th of this month, I am directed by Earl Grey to state to you, with as much distinctness as possible (since there appears to have been some misunderstanding on the subject), the course which Her Majesty's Government have adopted, and propose to pursue, relative to the charges against the Hudson's Bay Company.

2. In pursuance of the Address of The House of Commons, praying Her Majesty to take such means as might seem most fitting and effectual to ascertain the legality of certain powers claimed by that Company, Lord Grey called on the Company for a statement of those claims, and laid it before the Attorney and Solicitor-General for their opinion. You are acquainted with their opinion, which was to the effect, that the rights so claimed by the Company properly belonged to them.

3. They

3. They added a suggestion that yourself, or any other party dissatisfied with their opinion, might be recommended to prosecute complaints against the Company by means of a Petition to the Queen, which might be referred to the Judicial or some other Committee of the Privy Council.

4. This offer was accordingly made to yourself. You now appear to suppose that Her Majesty's Government, in making the offer, intended to defray out of public funds the expense which must attend such an investigation.

5. This, however, Her Majesty's Government cannot consent to do. Having been advised by their own Law Officers that the claims of the Company are well-founded, they cannot impose on the public the expense of proceedings which, in the opinion of their own regular Advisers, will prove ineffectual. All that is in their power is, to recommend that those who are dissatisfied with that opinion should pursue the course pointed out by the Law Advisers for questioning it, and to assist, as far as they may lawfully do, in having the question so raised brought to legal determination.

6. But the expense of the steps necessary for this purpose must be borne by the parties who undertake them; and if none of those persons who have brought under the notice of Lord Grey and of Parliament their exceptions to the jurisdiction and power claimed by the Company, are willing to incur such expense, Her Majesty's Government must consider that there are no further steps which it is in their power to adopt for the purpose of ascertaining the legal validity of the claims of the Company.

I have &c.

(signed) *B. Hawes.*

— No. 16: —

COPY of a LETTER from *A. K. Isbister, Esq.*, to Earl *Grey*.

36, Rotherfield-street, Lower Road, Islington,

13 May 1850.

My Lord,
I HAVE the honour to acknowledge a communication from Mr. Under-Secretary Hawes of the 13th April, in reply to mine of the 16th April, stating, by your Lordship's direction, "the course which Her Majesty's Government have adopted, and are prepared to pursue, relative to the charges against the Hudson's Bay Company."

No. 16

A. K. Isbister, Esq.
to Earl Grey,
13 May 1850.

I am disposed to think either that there is some inadvertence in these expressions, or that some misapprehension exists as to the true state of the question with the Company. Your Lordship will, I am sure, find, upon consideration, that I have neither preferred, nor have I made the slightest allusion to, any charges against the Company; nor can I discover any reference to such charges in the Address of The House of Commons.

If, as I have reason to believe, your Lordship means to refer to the complaints of the Red River colonists, I would respectfully beg to remind you, that the decision upon these complaints was given and forwarded to America before the Session of Parliament in which the Address to which effect is now to be given was voted.

It will not be deemed unnecessary to recall these particulars to your Lordship's attention, as it is of great importance to have it clearly understood that the Address of The House of Commons was not the result of any complaints or charges made through me, nor of any representations addressed to Her Majesty's Government, and laid before Parliament, against the Hudson's Bay Company.

The attention of The House of Commons appears to have been directed to the question of the validity of the Company's charter on far higher grounds—on their opinion that the grant of a monopoly of trade, without the sanction of Parliament, was an unconstitutional exercise of the prerogative; and that if such was the character of the Company's charter, it must be regarded as an usurpation of the rights of British subjects, and to be in contravention of the laws of England.

It can hardly be supposed that, in calling upon Her Majesty's Government to bring a question involving a principle of this importance to a legal determination

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mination, The House of Commons would be unprepared to defray the expense with which such an investigation must necessarily be attended; still less can it be imagined that Parliament could ever contemplate, that, after Her Majesty's Government had undertaken the inquiry, an individual should be called upon to sustain the burden of it, as is now required of me by your Lordship. I have already expressed, and now again repeat, my willingness "to assist, as far as I may lawfully do, in bringing the question to a legal issue;" but I must be permitted respectfully to suggest, that the duty your Lordship desires to impose upon me is not "to assist," but to assume the entire responsibility of the investigation.

While these reasons would in themselves be sufficient to prevent my assuming a position apparently so different from that which must have been intended, there are other considerations which would equally incline me to this determination. The Address of The House of Commons provides for an inquiry, not merely into the powers to which, for a present and specific object, the Company may deem it prudent to limit their claims, but into those actually "exercised" by them, of which latter question it is observable that Mr. Hawes makes no allusion in his letter to me.

To attempt to carry out the object of The House of Commons, by applying to the Hudson's Bay Company for a statement of their claims, upon which to found an opinion that shall have the force of an authoritative decision, scarcely seems to be in unison with their views. Nor can it be supposed that the opinion of counsel, however eminent, on an *ex parte* statement will confer much authority on a doubtful question of law, more especially on the present occasion, where equally eminent authority is arrayed in support of an opposite conclusion.

Regarding The House of Commons, therefore, as the proper judges as to the extent to which the course hitherto adopted, and now proposed to be pursued, by your Lordship is calculated to give effect to their object in the Address which they have presented, I must, for my own part, beg leave once more, and finally, to decline taking up the investigation at the stage to which it has now arrived. The only result which I could foresee from undertaking the task which it is sought to impose upon me, would be, to enable those whose opinions on the question for decision are totally at variance with my own, and over whom, at the same time, I should not be able to exercise the smallest control, to carry out their peculiar views as to the Company's charter at my expense, and thus entirely defeat, instead of promoting, the inquiry demanded by Parliament.

I have, &c.

(signed) A. K. Isbister.

P. S.—I shall feel obliged by your Lordship's informing me, at your earliest convenience, whether you consider the present communication as concluding the correspondence with which you have been pleased to honour me.

—No. 17.—

COPY of a LETTER from *B. Hawes, Esq.* to *A. K. Isbister, Esq.*

No. 17.

B. Hawes, Esq., to
A. K. Isbister, Esq.,
31 May 1850.

Sir,

Downing-street, 31 May 1850.

With reference to the inquiry contained in the postscript of your letter of the 13th instant, I am directed by Earl Grey to acquaint you, that his Lordship considers the correspondence between yourself and his department on the subject of the Hudson's Bay Company as closed.

I have, &c.

(signed) B. Hawes.

—No. 18.—

EXTRACT of a LETTER from Sir *J. Pelly, Bart.* to the Right. hon. Earl *Grey*;
dated Hudson's Bay House, 31 May 1850.

No. 18.

Sir J. Pelly, Bart.,
to Earl Grey,
31 May 1850.

"PERMIT me at the same time to state, that the Company's ships for Hudson's Bay are appointed to sail on the 8th June, and that it would be of the utmost importance

importance if the decision of the Privy Council on the rights and privileges of the Company were sent out by that opportunity, and the Governor directed to issue a proclamation agreeable to the tenor of the decision, which would, in my opinion, greatly tend to allay the excitement in which a portion of the half-breed inhabitants have been kept."

— No. 19. —

EXTRACT of a LETTER from *B. Hawes*, Esq. to Sir *John Pelly*, Bart.; dated Downing-street, 6 June 1850.

No. 19.

B. Hawes, Esq., to
Sir J. Pelly, Bart.,
6 June 1850.

"With reference to your observation, 'that it would be of the utmost importance if the decision of the Privy Council on the rights and privileges of the Company, were sent to Hudson's Bay by one of the ships appointed to sail on the 8th instant,' I am to remind you, that the proceedings for the purpose of giving effect to the Resolution of The House of Commons of 5th July 1849, have not led to any reference to the Privy Council, and that the question raised by that Resolution stands in the following position:

"Steps having been taken, as you are aware, to obtain from the Hudson's Bay Company a statement of its claims, that statement was duly submitted to Her Majesty's Law Advisers, and Her Majesty's Government received from them a report that the claims of the Company were well founded. It was observed in that report that, with a view to the fuller satisfaction of The House of Commons, and the parties interested, it would be advisable to refer the inquiry to a competent tribunal, and that the proper method of raising a discussion upon it would be for some person to address a Petition to Her Majesty, which Petition might then be referred either to the Judicial Committee, or the Committee of Privy Council for Trade and Plantations.

"Such a Petition was, therefore, essential to the complete prosecution of the inquiry; Lord Grey accordingly gave to certain parties in this country, who had taken an interest in the condition of the inhabitants of the Hudson's Bay Company's Territories, and had questioned the validity of the Company's Charter, an opportunity to prefer the necessary Petition if they were so disposed; but, for reasons which it is unnecessary to repeat, they respectively declined to do so. Lord Grey having, therefore, on behalf of Her Majesty's Government, adopted the most effectual means open to him for answering the requirements of the Address, has been obliged, in the absence of any parties prepared to contest the rights claimed by the Company, to assume the opinion of the Law Officers of the Crown in their favour to be well-founded."

— No. 20. —

COPY of a LETTER from *A. Barclay*, Esq., Secretary to the Hudson's Bay Company, to *B. Hawes*, Esq.

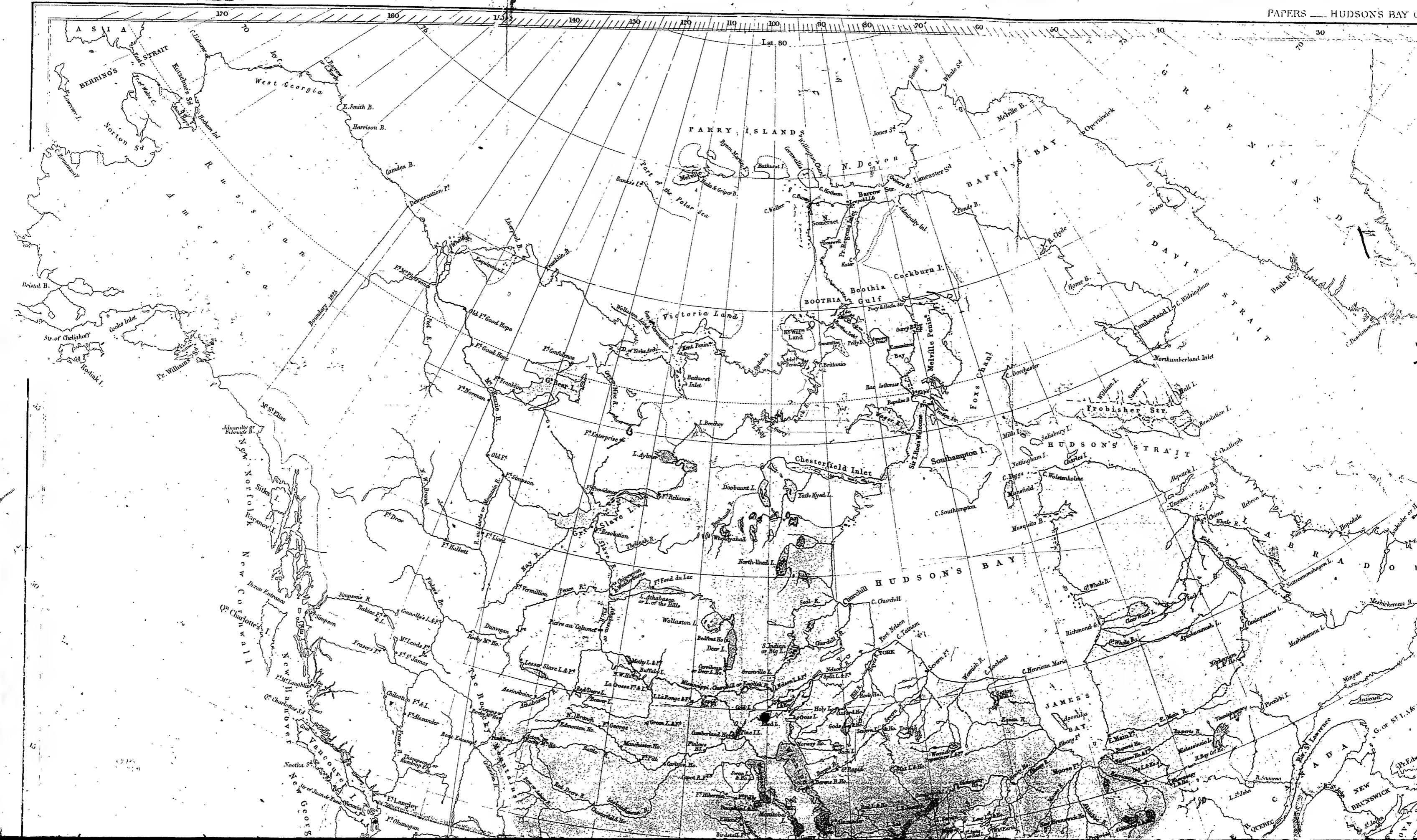
Sir,

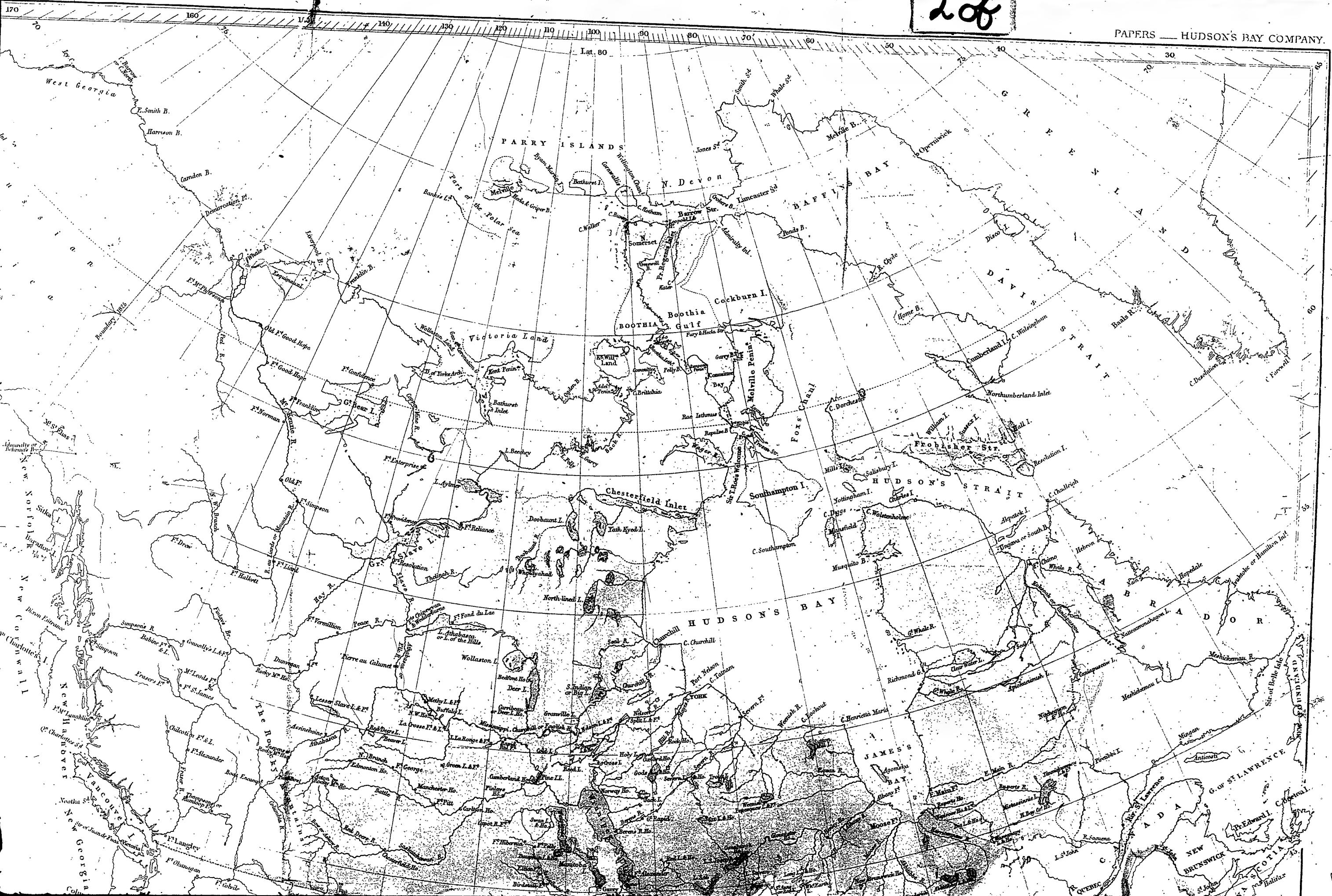
Hudson's Bay House, 20 June 1850.

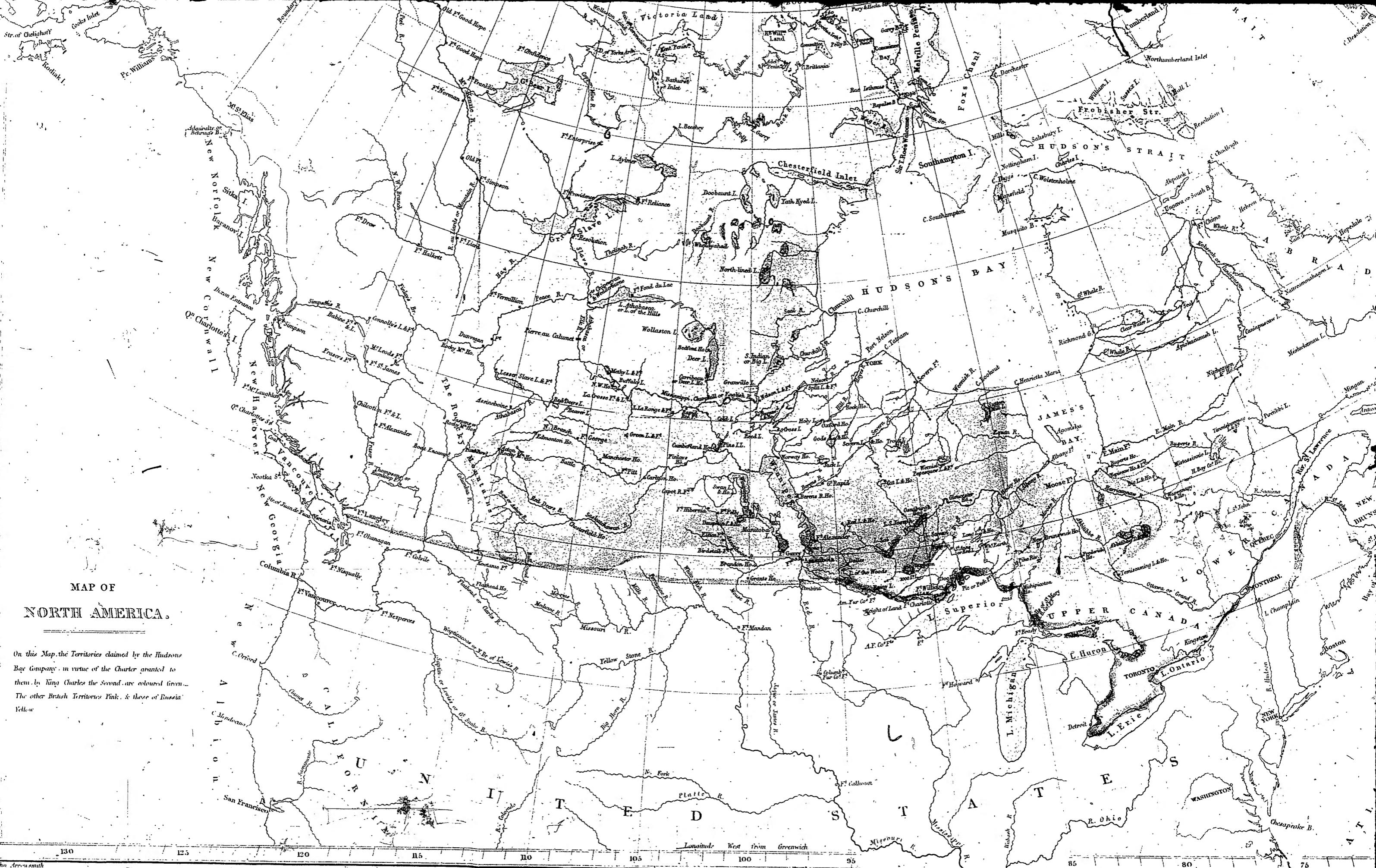
I AM directed to acknowledge the receipt of your letter to the Governor of the Hudson's Bay Company, dated the 6th instant, relative to the proceedings for ascertaining the rights claimed by the Company.

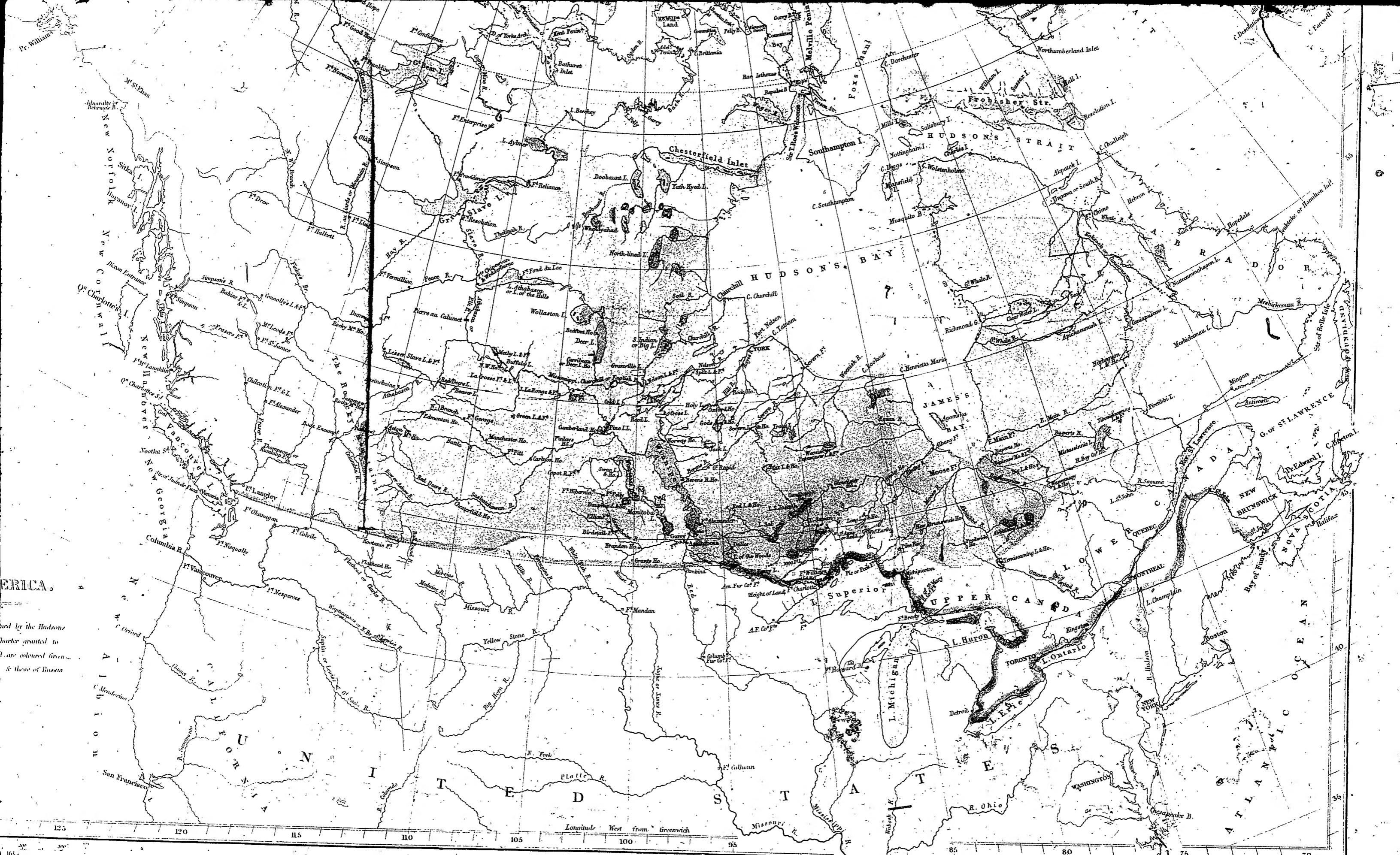
I have, &c.

(signed) *A. Barclay, Secy.*









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